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December 8, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20024

RECEIVED

DEC - 8 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Oral *Ex Parte* Presentation;
CC Docket No. 94-129

Dear Ms. Salas:

On Monday, December 7, 1998, Teltrust, Inc. discussed its views on verification issues addressed in Common Carrier Docket No. 94-129 with Kyle D. Dixon of Commissioner Michael K. Powell's office. Attached to this letter are a memorandum regarding the oral *ex parte* presentation, Teltrust's proposed changes to the Commission's anti-slamming rules, and a copy of the California verification requirements.

Please contact me if you have any questions regarding the meeting.

Sincerely,


Loretta J. Garcia

Attachments

cc: Kyle D. Dixon

LJG/rl

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Attachment A

DOW, LOHNES & ALBERTSON, PLLC

MEMORANDUM

RECEIVED

TO: Secretary, Federal Communications Commission

FROM: Leonard Kennedy
Loretta Garcia

DATE: December 8, 1998

RE: Oral *Ex Parte* Presentation by Teltrust, Inc.;
CC Docket No. 94-129

DEC - 8 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Participants in the meeting held on Monday, December 7, 1998, were: Steven P. Goldman and Martin Senn of Teltrust, Inc. and Leonard J. Kennedy and Loretta J. Garcia of Dow, Lohnes and Albertson, PLLC, and Kyle D. Dixon, Legal Advisor to Commissioner Michael K. Powell.

The presenters described Teltrust's business units and its operations. The participants discussed the use of independent third party verification ("TPV") when consumers change their selected telecommunications provider(s), the advantages of TPV as compared to other methods of verification, live TPV versus automated TPV, and the possible use of TPV when the customer installs or removes a preferred carrier freeze. The participants also discussed the California verification requirements and workshop recommendations and responded to questions asked by Mr. Dixon.

Attachment A

DOW, LOHNES & ALBERTSON, PLLC

MEMORANDUM

TO: Secretary, Federal Communications Commission

FROM: Leonard Kennedy
Loretta Garcia

DATE: December 8, 1998

RE: Oral *Ex Parte* Presentation by Teltrust, Inc.;
CC Docket No. 94-129

Participants in the meeting held on Monday, December 7, 1998, were: Steven P. Goldman and Martin Senn of Teltrust, Inc. and Leonard J. Kennedy and Loretta J. Garcia of Dow, Lohnes and Albertson, PLLC, and James L. Casserly, Senior Legal Advisor, and Linda Kinney, Legal Advisor, to Commissioner Susan Ness.

The presenters described Teltrust's business units and its operations. The participants discussed the use of independent third party verification ("TPV") when consumers change their selected telecommunications provider(s), the advantages of TPV as compared to other methods of verification, live TPV versus automated TPV, and the possible use of TPV when the customer installs or removes a preferred carrier freeze. The participants also discussed the California verification requirements and workshop recommendations and responded to questions asked by Mr. Casserly and Ms. Kinney.

Attachment B

**TELTRUST, INC.
PROPOSED AMENDMENTS TO FCC ANTI-SLAMMING RULES**

[ADD A NEW RULE (*e.g.*, § 64.1160) TO READ AS FOLLOWS:

**§ 64.1160 VERIFICATION OF CUSTOMER FREEZE OF
TELECOMMUNICATIONS CARRIER SELECTION.**

**NO CARRIER SHALL SUBMIT TO AN EXECUTING CARRIER — OR
EXECUTE, IN THE CASE OF A CARRIER THAT IS BOTH THE SUBMITTING
CARRIER AND THE EXECUTING CARRIER — THE INSTALLATION OF A
FREEZE OF THE CUSTOMER'S PC SELECTION, OR THE REMOVAL OF A
FREEZE OF THE CUSTOMER'S PC SELECTION, UNLESS AND UNTIL THE
FREEZE INSTALLATION OR REMOVAL HAS FIRST BEEN CONFIRMED BY
A CERTIFIED, LIVE, INDEPENDENT THIRD PARTY VERIFICATION
ENTITY.**

Attachment C

**TELTRUST, INC.
PROPOSED AMENDMENTS TO FCC ANTI-SLAMMING RULES**

NOTE: Existing language is stated in upper and lower case letters, while proposed language is provided in all capital letters and bold font.

§64.1100 Verification of orders for long distance service generated by telemarketing.

No IXC shall submit to a LEC a primary interexchange carrier (PIC) change order generated by telemarketing unless and until the order has first been confirmed in accordance with the following procedures.

[AMEND HEADING AND INTRODUCTORY SENTENCE TO READ AS FOLLOWS:

§64.1100 VERIFICATION OF ORDERS FOR TELECOMMUNICATIONS SERVICES GENERATED BY TELEMARKETING.

NO CARRIER SHALL SUBMIT TO AN EXECUTING CARRIER A PREFERRED CARRIER (PC) CHANGE ORDER GENERATED BY TELEMARKETING UNLESS AND UNTIL THE ORDER HAS FIRST BEEN CONFIRMED IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:]

(a) The IXC has obtained the customer's written authorization in a form that meets the requirements of §64.1150; or

[REDESIGNATE SUBSECTION (b) AS SUBSECTION (c).]

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number); or

[REDESIGNATE SUBSECTION (c) AS (b) AND AMEND SUBSECTION TO READ AS FOLLOWS:

(b) A CERTIFIED, INDEPENDENT, THIRD PARTY VERIFICATION ENTITY, AS THAT TERM IS DEFINED IN SECTION 64.1180, HAS OBTAINED THE CUSTOMER'S ORAL AUTHORIZATION TO SUBMIT THE PC CHANGE ORDER THAT CONFIRMS AND INCLUDES THE FOLLOWING VERIFICATION INFORMATION:

(1) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE CUSTOMER;

(2) CONFIRMATION THAT THE PERSON ORDERING THE CHANGE IS OVER EIGHTEEN YEARS OF AGE AND IS AUTHORIZED TO MAKE THE CHANGE;

(3) THE NAME OF THE SOLICITING CARRIER;

(4) A DESCRIPTION OF ANY TERMS, CONDITIONS, OR CHARGES THAT WILL BE INCURRED;

(5) THE DATE OF BIRTH AND/OR FOUR DIGITS OF THE SOCIAL SECURITY NUMBER OF THE PERSON AUTHORIZED TO MAKE THE CHANGE;

AND

(6) A DESCRIPTION OF ANY OPTIONAL PRODUCTS OR SERVICES THAT ARE BEING PURCHASED.]

[DELETE SUBSECTION (d).]

[ADD A NEW RULE (*e.g.*, § 64.1170) TO READ AS FOLLOWS:

§ 64.1170 CARRIER LIABILITY WHEN USING LIVE, INDEPENDENT THIRD PARTY VERIFICATION.

IN THE EVENT A TELECOMMUNICATIONS CARRIER EMPLOYS LIVE, INDEPENDENT THIRD PARTY VERIFICATION AS ITS METHOD OF PC CHANGE VERIFICATION FOR A PARTICULAR ORDER THAT IS THE SUBJECT OF A CONSUMER COMPLAINT, SUCH CARRIER SHALL BE LIABLE TO THAT COMPLAINING CUSTOMER ONLY FOR REIMBURSEMENT OF THE PC CHANGE FEE AND REIMBURSEMENT OF THE UNAUTHORIZED CHARGES BILLED AND PAID, PROVIDED THAT THE CARRIER HAS A RECORD OF CONSUMER COMPLAINTS FILED WITH THIS COMMISSION AT A LEVEL OF NO MORE THAN ____ [TO BE DETERMINED] PERCENT OF TOTAL MONTHLY VERIFIED ORDERS.]

[ADD A NEW RULE (*e.g.*, § 64.1180) TO READ AS FOLLOWS:

§ 64.1180 ELEMENTS NECESSARY FOR CERTIFICATION AS AN INDEPENDENT THIRD PARTY VERIFICATION ENTITY.

IN ORDER TO BE QUALIFIED AS AN INDEPENDENT THIRD PARTY VERIFICATION ENTITY FOR PURPOSES OF PART 64, SUBPART K, THE ENTITY SHALL:

(1) NOT BE OPERATED BY, CONTROLLED BY, OR OWNED AT A LEVEL OF FIVE PERCENT OR GREATER BY THE SOLICITING CARRIER;

(2) BE OPERATED IN A LOCATION GEOGRAPHICALLY SEPARATE FROM THE SOLICITING CARRIER;

AND

(3) SIMULTANEOUSLY RECORD VERIFICATION OF THE PC CHANGE ORDER WITH A VOICE RECORDING DEVICE.

California Codes - Public Utilities Code - Section 2889.5

2889.5. (a) No telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber until all of the following steps have been completed:

(1) The telephone corporation, its representatives or agents shall thoroughly inform the subscriber of the nature and extent of the service being offered.

(2) The telephone corporation, its representatives or agents shall specifically establish whether the subscriber intends to make any change in his or her telephone service provider, and explain any charges associated with that change.

(3) For sales of residential service, the subscriber's decision to change his or her telephone service provider shall be confirmed by an independent third-party verification company. For purposes of this provision, the confirmation by a third-party verification company shall be made as follows:

(A) The third party verification company shall meet each of the following criteria:

(i) Be independent from the telephone corporation that seeks to provide the subscriber's new service.

(ii) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by the telephone corporation that seeks to provide the new service or by any corporation, firm, or person who directly or indirectly manages, controls, or directs, or owns more than 5 percent of the telephone corporation.

(iii) Operate from facilities physically separate from those of the telephone corporation that seeks to provide the subscriber's new service.

(iv) Not derive commissions or compensation based upon the number of sales confirmed.

(B) The telephone corporation seeking to verify the sale shall do so by connecting the subscriber by telephone to the third-party verification company or by arranging for the third party verification company to call the subscriber to confirm the sale.

(C) The third-party verification company shall obtain the subscriber's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the subscriber upon request. Information obtained from the subscriber through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved subscriber

against the telephone corporation or its employees who are responsible for the violation.

(D) Notwithstanding subparagraphs (A), (B), and (C), a service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers. However, a service provider shall not avoid the verification requirements by asking a subscribing customer to contact a local exchange service provider directly to make any change in the service provider. A local exchange service provider shall be required to comply with these verification requirements for its own competitive services. However, a local exchange service provider shall not be required to perform any verification requirements for any changes solicited by another telephone corporation.

(4) For sales of all nonresidential services, the subscriber's decision to change his or her service provider shall be confirmed through any of the following means:

(A) Independent third party verification, as set forth in paragraph (3) of subdivision (a).

(B) The telephone corporation shall mail to the subscriber an information package seeking confirmation of his or her change in the telephone corporation. The information package shall describe the new service and shall include a postage prepaid postcard or mailer that the subscriber can use to deny, cancel, or confirm a service order, as soon as possible, and wait 14 days after the information package is mailed before making the change in the telephone corporation. The telephone corporation shall make the change only if the subscriber does not cancel the change in service order.

(C) Verify the subscriber's change in his or her telephone service provider by obtaining the subscriber's signature on a document fully explaining the nature and extent of the action. The document shall be a separate document whose sole purpose is to explain the nature and extent of the action.

(D) Obtain the subscriber's authorization through an electronic means that takes the information, including the calling number, and confirms the change to which the subscriber has given his or her consent.

(5) Where the telephone corporation obtains a written order for service, the document shall thoroughly inform the subscriber of the nature and extent of the action. The subscriber shall be furnished with a copy of the signed document. The subscriber by his or her signature on the document shall indicate a full understanding of the relationship being established with the telephone corporation. When a written subscriber solicitation or other document contains a letter of agency authorizing a change in service provider, in combination

with other information including, but not limited to, inducements to subscribers to purchase service, the solicitation shall include a separate document whose sole purpose is to explain the nature and extent of the action. If any part of a mailing to a prospective subscriber is in language other than English, any written authorization contained in the mailing shall be sent to the same prospective subscriber in the same language.

(6) The telephone corporation shall retain a record of the verification of the sale for at least one year. These records shall be made available to the subscriber, the Attorney General, or the commission upon request.

(b) If a residential or business subscriber that has not signed an authorization notifies the telephone corporation within 90 days that he or she does not wish to change telephone corporations, the subscriber shall be switched back to his or her former telephone corporation at the expense of the telephone corporation that initiated the change.

(c) For purposes of this section, competitive services are those services where subscribers have the ability to presubscribe to a telephone service provider.

(d) When a subscriber changes telephone service providers, the charge shall be conspicuously noticed on the subscriber's bill. Notice in the following form is deemed to comply with this subdivision:

"NOTICE: Your local (or long distance) telephone service provider has been changed from (name of prior provider) to (name of current provider).

Cost of change: \$ ____."

(e) Any telephone corporation that violates the verification procedures described in this section shall be liable to the telephone corporation previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation.

(f) The remedies provided by this section are in addition to any other remedies available by law.

(g) As described in federal law, no telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber without having on file, or having instituted reasonable steps designed to obtain, signed, dated orders for service from the subscriber. All orders shall be in the form prescribed in federal law for letters of agency. As described in federal law, the telephone corporation is

responsible for charges associated with disputed changes in telephone service for which it cannot produce a signed, dated order for service from the subscriber. This subdivision applies to all intrastate services for which competition has been authorized.